IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5448 OF 2005

Sanjeev Dhondu Nikam .. Petitioner

Versus

Manjusha Sanjeev Nikam .. Respondent

Mr.N.R.Bubna for petitioner

Mrs.Revati Dere for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 3rd February 2006.

P.C.

. Heard Mr.Bubna for petitioner- husband and Mrs.Dere for respondent -wife.

2. Petitioner husband is aggrieved by an order dated 6th July 2004 passed Civil Judge, Senior Division, Malegaon below Exh.7 in Hindu Marriage Petition No.64 of 2002.

3. Order under challenge allows the application of the respondent wife and directs petitioner husband to pay to her Rs.3000/- per month from the date of the application i.e. 26th November 2002 till decision of the petition as also Rs.3000/- as costs.

4. After this petition was filed in this Court, on 11th August 2005 this Court had directed issuance of notice and stayed the order under challenge to the extent of recovery of arrears. The maintenance at the rate awarded i.e. Rs.3,000/- per month would therefore have to be paid from month to month, is the effect of this order.

5. The above order was passed by this Court on 22nd August 2005 and, thereafter, the matter has been adjourned.

6. This matter was placed today after respondent wife entered appearance.

7. Grievnce of Mr.Bubna is that the daughter from the wedlock of petitioner and respondent is presently residing with petitioner father and the trial court's order directing maintenance of Rs.3000/- only for respondent wife is, therefore, erroneous and the same is exhorbitant.

8. Second submission of Mr.Bubna is that respondent - wife is employed and also conducting tutions. Her monthly salary, according to learned Judge, is Rs.2940/-. In these circumstances, considering the income of petitioner, the sum of Rs.3000/- cannot be said to be reasonable.

9. Mr.Bubna states on instructions from petitioner husband that salary of respondent wife together with perquisites is in the range of Rs.8000/- per month.

10. Mrs.Dere on the other hand submits that the learned Judge has taken into consideration the nature of her employment as Shikshan Sevak and, thereafter, relying on salary certificate, has passed impugned order which requires no interference by this Court under Article 227 of Constitution of India.

11. In my view, it is not necessary to go into the rival contentions. More so, in the light of the order passed by this Curt on 22nd August 2005. Mr.Bubna states that petitioner is paying Rs.3000/- per month from the date of order passed by this Court and shall continue to pay the same till such period as this Court would

stipulate in the final order. In the light of this further statement of Mr.Bubna and with a view to affording opportunity to petitioner husband to move trial court for modification, variation or setting aside the order under challenge, the following order is passed.

(a) In case the petitioner applies to the trial court within a period of two weeks from today for modification of the order dated 6th July 2004 the said application shall be decided after a reply is filed thereto by respondent wife within a period of six weeks from the date the pleadings are complete.

(b) Petitioner husband to pay the sum of Rs.3000/- as directed under the impugned order till such time as the trial court passes appropriate orders on the application as above.

(c) Petitioner is at liberty to produce such materials as are permissible in law with a view to substantiate his pleas in the application to be filed.

(d) Equally, the respondent wife would be at liberty to controvert the same and submit that the order requires no modification;

(e) It would be for the trial court to pass appropriate orders on merits and in accordance with law on such an application. However, the directions issued by this Court on 22nd August 2005 with regard to recovery of arrears shall continue till the application is decided finally by the trial court.

(f) Present petition is disposed of

accordingly. No costs.

(S.C.DHARMADHIKARI, J)